

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

DUPLIUM CORPORATION, §  
§  
Plaintiff, §  
§  
v. § CASE NO. 3:10-cv-02416-K  
§  
SOUL CONCERTS.COM LIMITED §  
and DARRYL PAYNE, §  
§  
Defendants. §

**PLAINTIFF'S NOTICE OF DISMISSAL WITHOUT PREJUDICE**

Plaintiff Duplium Corporation ("Plaintiff") files this Notice of Dismissal Without Prejudice pursuant to Federal Rule of Civil Procedure 41, as follows:

1. Plaintiff filed this suit on or about November 29, 2010.
2. Since that time, Plaintiff has been unable to locate Defendant Darryl Payne, who also serves as the registered agent for co-Defendant Soul Concerts.com Limited.
3. A process server retained by Plaintiff was not able to locate Payne at Soul Concerts.com Limited's registered address—2760 Beverly Dr., Suite 9, Aurora, IL 60502—and Plaintiff has been unable to locate any other address for Payne through publicly available records.
4. Plaintiff's counsel has spoken to lawyer who represents the plaintiff in another lawsuit filed against Payne, Case No. 10-cv-08142, styled *Vernon Sawyer v. Darryl Payne*, now pending in the United States District Court for the Southern District of New York (the "New York Action"). The plaintiff in the New York Action, too, has been unable to locate or serve Payne.
5. Plaintiff also contacted a lawyer named David P. Lloyd, who represented Payne in

a bankruptcy case commenced in the United States District Court for the Northern District of Illinois in September 2006. Although Payne was granted a discharge in that case in 2009, Mr. Lloyd continued to represent Payne and, in fact, filed a motion on Payne's behalf on December 27, 2010. Mr. Lloyd has refused to accept service for Payne or Soul Concerts.com Limited, however. Moreover, the plaintiff in the New York Action served discovery on Mr. Lloyd asking for Payne's current address, but Mr. Lloyd responded with the same Beverly Drive address at which Plaintiff has already attempted service unsuccessfully.

6. In sum, despite diligence, Plaintiff has been unable to locate Defendants and, therefore, has been unable to serve Defendants. As a result, Defendants have not answered or otherwise responded to Plaintiff's Original Complaint.

7. This action is not a class action, so the requirements of Rules 23(e), 23.1(c), and 23.2 do not come into play.

8. No receiver has been appointed in this action, so the requirements of Rule 66 do not come into play.

9. Plaintiff has not dismissed an action based on or including the same claims as those presented in this action.

10. To Plaintiff's knowledge, this action is not governed by any federal statute that requires an order of the Court for dismissal of this action.

11. Based on the foregoing, Plaintiff hereby provides notice of dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1).

12. Because Defendants have not answered or filed a motion for summary judgment, a court order is not required to effectuate this dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Nevertheless, a proposed form of Order of Dismissal is being

submitted concurrently herewith.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests the Court to (a) take notice of this dismissal; (b) enter the proposed Order of Dismissal submitted concurrently herewith to the extent necessary; and (c) grant Plaintiff such other and further relief to which it may be justly entitled.

Dated: May 12, 2011

Respectfully submitted,

**WINSTEAD PC**  
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By: /s/ Brian Vanderwoude  
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**ATTORNEYS FOR PLAINTIFF  
DUPLIUM CORPORATION**